IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE **P.D.DINAKARAN**
and
THE HONOURABLE MRS.JUSTICE **CHITRA VENKATARAMAN**

W.P.No.21352 of 2004

M.Ganesan .. Petitioner

versus

1. The Vice-Chairman
   The Settlement Commission (IT & WT)
   Additional Bench
   488-489, Anna Salai
   Chennai-600 035.

2. The Income-tax Officer
   Ward I(1)
   Madurai. .. Respondents

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**PRAYER:** Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari, calling for the records of the first respondent in Settlement Application No.21/MDU/123/96-IT dated 16.7.2002 and to quash the same in so far as it relates to non-waiver of interest under Sections 234A, 234B, 234C, 139(8), 215 and 217 of the Income-tax Act.

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For appellant : Mr.R.Janakiraman

For Respondents : Mrs.Pushya Sitaraman
Senior Senior Standing Counsel for
Income Tax

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ORDER

**(Order of the Court was made by CHITRA VENKATARAMAN,J.)**

The writ petition is against the order of the Settlement Commission dated 16.7.2002, rejecting the plea for waiver of interest chargeable under Sections 234-A, 234-B and 234-C, relating to the assessment years 1989-90 to 1996-97, on the view that the conditions stipulated in the notification of the Central Board of Direct Taxes (C.B.D.T.) dated 23.5.1996 were not attracted.

2. The petitioner preferred an application before the Settlement Commission under Section 245-C of the Income Tax Act. The case was processed and ultimately, the Settlement Commission passed an order on 16.7.2002, fixing the total income at Rs.27,75,783/-. On the question of payment of interest chargeable under Sections 139(8), 215 and 217 of the Income Tax Act for the 1986-87, 1987-88 and 1988-89, the Settlement Commission waived 50% of the interest, taking note of the circumstances under Rules 117-A and 40 of the Income Tax Rules. However, for the assessment years 1989-90 to 1996-97, the Settlement Commission rejected the plea on the ground that the order of the C.B.D.T. dated 23.5.1996 was not attracted.

3. The grievance of the petitioner in this writ petition is that the Settlement Commission's rejection of the plea of waiver for the assessment years 1989-90 to 1996-97 as well as restricting the waiver to 50% of the interest under Sections 139 (8), 215 and 217 relating to the assessment years 1986-87 to 1988-89 are totally contrary to the Board's order as well as the Rules.

4. The petitioner contends that it had filed the returns for the assessment years 1986-87 to 1992-93 voluntarily before any action was taken by the Revenue. The proceedings under Section 132(5) was confined to the materials seized, and thus completed the assessment for the years 1993-94 to 1995-96. Consequently, he submitted that the case was covered by the conditions mentioned in the Board's notification dated 23.5.1996. He further submitted that considering the fact that he had satisfied all the conditions in the Board's order and that the materials seized during the search were never returned to the petitioner, thus leading to the delayed filing of the return and payment of tax, the plea for waiver merited to be considered favourably. He also stated that the conditions which favoured the granting of waiver at 50% for the assessment years 1986-87 to 1988-89 equally applied to the other half also. In short, he submitted that the first respondent should have favourably considered the petition to grant the relief for the entirety of the interest chargeable under Sections 139(8), 215 and 217 of the Act. He further pointed out that the Settlement Commission had not given any reason while restricting

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the waiver to 50%. Consequently, placing reliance on the decision reported in **259 ITR 215 (COMMISSIONER OF INCOME TAX Vs. SMT.G.A.SAMANTHAKAMANI)**, he stated that the order of the Settlement Commission was not sustainable in law. He also stated that the petitioner moved an application before the Chief Commissioner for waiver. However, the same was rejected by the Commissioner by order dated 19.5.2002, on the ground that the Settlement Commission, the first respondent herein, had already exercised its mind on the matter. Thus, the petitioner prays for setting aside of the order to grant the relief. The petitioner states that, left with no other remedy, he had approached this Court under Article 226 of the Constitution of India for setting aside the order of the first respondent and to grant the relief of waiver.

5. Learned counsel appearing for the petitioner referred to the C.B.D.T.'s notification dated 23.5.1996 and submitted that the circumstances favoured the granting of waiver and the conditions and Rules 117-A and 40 are fully satisfied, and hence the first respondent - Settlement Commission, ought to have granted the relief. There are no negative circumstances to work against the prayer for full waiver. As regards the waiver sought for in respect of the assessment years 1989-90 to 1996-97, he submitted that the search was conducted in terms of Section 132 of the Act on 26.10.1994. The records were seized at the time of search. The revised returns were filed consequent on the search to reopen the assessment proceedings to enable the petitioner to file a petition before the first respondent herein. Notices under Section 148 were also issued for the respective years. The petitioner approached the first respondent on 22.1.1997 and the final order after admission was passed on 16.7.2002. The petitioner returned additional income originally at Rs.10,33,294/- and subsequently revised it, showing an enhanced income at Rs.13,04,845/- . Ultimately, the first respondent fixed the total taxable income at 27,75,783/-. The petitioner states that the additions made by the Settlement Commission were not anticipated; that there was an estimation of cost of construction of the residential property. He submitted that the estimation or addition on the total income was purely on the ground of the rejection of the explanation or on estimate. In the circumstances, he submitted that the case merited a waiver of interest under Sections 234-A, 234-B and 234-C.

6. Learned counsel pointed out that the order of the first respondent except for stating that the petitioner had no case for seeking waiver in terms of the CBDT order dated 23.5.1996, failed to assign reasons; in the circumstances on the sole ground of perfunctory order passed, the writ petition deserves to be allowed.

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7. The perusal of the Board's order dated 23.5.1996 lists out the circumstances under which a reduction or waiver of interest under Section 234-A, 234-B or 234-C can be considered. Given this power of waiver and the circumstances under which it could be considered, the authority before whom a petition is made, is bound to consider the circumstances warranting a rejection or a reduction. Devoid of reasons indicated for reduction, it is difficult to uphold the order of the first respondent. The first respondent had given the waiver of 50% as regards the interest chargeable under Sections 139(8), 215 and 217 of the Act. Considering the fact that the order does not disclose the reasons for restricting the waiver to 50% as regards the interest under 139(8), 215 and 217 of the Act and not considering the plea of waiver in respect of interest chargeable under Sections 234-A, 234-B and 234-C, we set aside the order of the first respondent, directing the first respondent to consider the claim of the assessee as regards the waiver of interest levied under the provisions stated above and pass afresh a considered order after giving sufficient opportunity in accordance with law.

The writ petition is ordered accordingly.

Ksv

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

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   Ward I(1)
   Madurai.

+ one cc to Mrs. Pushya Sitaraman, Advocate sr no. 15302
+ one cc to Mr. R. Janakiraman, Advocate sr no. 15210

db(co)
nm(26.03.07)

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